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10
11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF WASHINGTON**

13
14 -----X
15 ZAYN AL-ABIDIN MUHAMMAD HUSAYN
16 also known as ABU ZUBAYDAH

17 Plaintiff,

18 Case No. _____
19
20 vs.

21
22 JAMES MITCHELL and
23 JOHN "BRUCE" JESSEN

24
25 **COMPLAINT AND**
26 **DEMAND FOR JURY**
27 **TRIAL**

28 Defendants.
-----X

29
30 I firmly believe that all people, even captured enemies,
31 possess basic human rights which are protected by
32 international standards often set by America's past
33 leaders. Our enemies act without conscience. We must not.

34 Senator McCain, 161 Cong. Rec. S4181
35 (daily ed. Jun. 16, 2015)

COMPLAINT AND DEMAND FOR JURY TRIAL

1 Plaintiff Zayn al-Abidin Muhammad Husayn (“Abu Zubaydah”), by and
2 through his undersigned counsel, respectfully alleges his complaint for
3 compensatory and punitive damages pursuant to Title 28, United States Code,
4 Section 1330, against Defendants James Mitchell and John “Bruce” Jessen as
5 follows:

6 **NATURE OF THE ACTION**

7 1. This case concerns an experimental torture program designed,
8 implemented, and personally administered by Defendants Mitchell and Jessen in
9 their roles as contractors for the U.S. Central Intelligence Agency (“CIA”). The
10 program, misleadingly referred to as “enhanced interrogation,” rested on the flawed
11 premise that systematic and prolonged abuse, including uncontrollable pain and
12 mental suffering, would yield actionable intelligence. In proposing the program to
13 the U.S. government, Mitchell and Jessen misled officials regarding the scope and
14 severity of the tactics that they would ultimately use on Abu Zubaydah. In practice,
15 Mitchell and Jessen used torture and cruel and inhuman treatment to force Abu
16 Zubaydah and other subjects into a state of “learned helplessness,” a pseudo-
17 scientific phrase for complete submission to the interrogator that, their theory went,
18 would render the subject unable to resist the interrogator’s demand for information.

19 2. Neither Mitchell nor Jessen was remotely qualified to design a proper
20 interrogation program for suspected Al Qaeda affiliates, and this was evident in their

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1 results. During the first weeks following his capture on March 28, 2002, Abu
2 Zubaydah was interrogated by agents from the U.S. Federal Bureau of Investigation
3 (“FBI”). In this brief period, he provided virtually all the actionable, reliable
4 information he possessed. By contrast, when Mitchell and Jessen inserted
5 themselves into the process in April of 2002, they were unable to obtain additional
6 information from Abu Zubaydah. Faced with this failure, they claimed that Abu
7 Zubaydah was withholding information, refused to accept that he had already
8 disclosed all his relevant information, and argued that this purported withholding
9 justified increasingly brutal tactics. The escalation of brutality did not produce
10 actionable intelligence, but this did not deter Mitchell and Jessen, as they were no
11 longer actually seeking information. Rather, they were using Abu Zubaydah as a
12 guinea pig for untested interrogation methods, laying the groundwork for what
13 provided them a hugely lucrative contracting business to provide detention and
14 interrogation personnel to the CIA and the U.S. Defense Department (“DOD”).
15 Mitchell and Jessen ultimately earned revenues in excess of \$80 million from this
16 scheme.

17 3. Prior to developing their torture program, neither Mitchell nor Jessen
18 had ever conducted an interrogation, and neither had knowledge of Al Qaeda, a
19 background in terrorism, or relevant cultural or linguistic expertise. Mitchell and
20 Jessen instead drew on their experience in the U.S. Air Force Survival, Evasion,

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1 Resistance and Escape (“SERE”) training program, where they had overseen mock
2 interrogations in a controlled setting. However, the program they devised—the
3 proactive use of coercive techniques for actual intelligence gathering—had never
4 been researched or proven effective. In other words, the mock torture techniques
5 employed in the SERE program served as a foil for defensive resistance training,
6 and there was no empirical basis to believe that they could be productive techniques
7 for U.S. forces to acquire information. Nor had Mitchell or Jessen ever implemented
8 these SERE-derived techniques outside the controlled training context with its many
9 safeguards that expressly prevented severe or prolonged physical or mental injury.
10 Notwithstanding the tremendous differences between the SERE program and what
11 would be done to Abu Zubaydah, Mitchell and Jessen repeatedly referenced SERE
12 in justifying their plan to the CIA and the Department of Justice (“DOJ”). This was
13 misdirection. The SERE resistance training was just that—training. It did not involve
14 genuine coercion, and was not a model for effective interrogation.

15 4. In early 2002, the CIA was desperate to regain footing after the
16 intelligence failures apparent in the wake of the September 11 attacks, and eager to
17 embrace “all means at its disposal” to meet its new mandate to detain and interrogate
18 terror suspects. In particular, the CIA’s Counter-Terrorism Center (the “CTC”),
19 under immense pressure to produce actionable intelligence, was receptive to
20 Mitchell and Jessen’s proposals, and either ignored or failed to appreciate that the

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1 proposed techniques had no proven track record and were built on the shaky, pseudo-
2 scientific foundation of learned helplessness. Seeking to lead the government's
3 intelligence gathering efforts and win valuable government contracts in the process,
4 Mitchell and Jessen had no incentive to draw on the copious institutional resources
5 already developed by the FBI and others with decades of interrogation experience
6 that had proven the effectiveness of non-coercive techniques. Instead, they
7 advocated the false promises of brutality, and convinced the CTC and others at the
8 CIA to support their approach and pay them to devise, implement, supervise, and
9 evaluate the program. While Mitchell and Jessen convinced the government's legal
10 team that they would implement the program without crossing legal limits, they
11 ultimately went fully rogue and exceeded long-standing boundaries in torturing Abu
12 Zubaydah. Given their potentially huge financial interest in future government
13 contracts, Mitchell and Jessen sought to become the go-to interrogation experts for
14 the CIA and DOD, and reported successes that were dubious at best.

15 5. Abu Zubaydah was the first victim subjected to Mitchell and Jessen's
16 program of torture. Captured in March 2002, he was erroneously believed to be the
17 number three leader in Al-Qaeda and was transported to a black site in Thailand.
18 What Mitchell and Jessen did to him there was a radical departure from the mock
19 interrogation program at SERE. Long gone were any safeguards; for months, Abu
20 Zubaydah endured solitary confinement; constant, intense light, cold, and noise;

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1 painful stress positions; prolonged sleep deprivation; starvation; confinement in
2 small coffin-like boxes; proximity to dangerous insects; and water torture/mock-
3 execution—often in combination, and all in longer durations, harsher conditions, and
4 crueler applications than SERE would have allowed. This was Mitchell and Jessen’s
5 first opportunity to test their hypothesis that these techniques would yield
6 intelligence, and they were eager to prove themselves right. Having applied and
7 refined these techniques over the course of months torturing Abu Zubaydah,
8 Mitchell and Jessen capitalized on their experience and won contracts to oversee the
9 coercive interrogation and torture of scores of other suspects, including some who
10 have successfully pursued claims similar to those alleged here. *See Complaint, Salim*
11 *v. Mitchell*, Case No. 2:15-CV-286 (E.D. Wa. 2015), ECF No. 1.

12 6. Mitchell and Jessen’s conduct caused significant harm to important
13 national interests. Having unqualified and inexperienced people implementing
14 torture on terror suspects left the U.S. intelligence network at a significant
15 disadvantage in the crucial period following the September 11 attacks. Had anyone
16 checked, they would have found evidence-based assessments that coercive
17 techniques “do not produce intelligence,” “will probably result in false answers,”
18 and have historically proven to be ineffective. Mitchell and Jessen opted to simply
19 ignore these assessments. Moreover, the torture of individuals in U.S. custody sent
20 shock waves of negative publicity around the world, supporting a widely held view

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1 that the U.S. government tortured people in violation of prevailing international
2 norms. This eroded the mutual deterrence that existed before September 11, and
3 greatly increased the risk of torture for U.S. servicemen and women, as well as
4 civilian intelligence officers, diplomatic personnel, reporters, aid workers, and
5 others. These harms are in addition to and wholly separate from the also significant
6 harm that Mitchell and Jessen caused individual prisoners and the government
7 personnel forced to witness and support Defendants' conduct (many of whom—
8 government personnel as well as prisoners—bear psychological scars from their
9 participation in torture).

10 7. Abu Zubaydah, in particular, bears lasting psychological and physical
11 injuries from the torture he endured at the hands of Mitchell and Jessen. He struggles
12 with basic bodily functions and lost the use of his left eye which, injured by shrapnel
13 during his capture, atrophied and shriveled as a result of a lack of adequate medical
14 attention. Due to other injuries sustained during his capture, and exacerbated by
15 Defendants' instructions to withhold medical treatment, among other things he lost
16 much of his intestine, causing severe constipation, and suffered interference with his
17 reproductive system including the loss of a testicle. As a result of blunt force trauma
18 to his head caused by Mitchell and Jessen, he also suffers from blinding headaches,
19 seizures, permanent brain damage, and memory loss. The latter is particularly
20 painful for him, given that he has been held nearly incommunicado for over two

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decades, and still cannot see or speak with his family; it grieves him that he is rapidly forgetting the faces of his loved ones.

8. Abu Zubaydah brings this action against Mitchell and Jessen, whose design, implementation, and administration of the torture program blatantly violated customary international law, laws and treaties of the United States, and the basic parameters of human decency.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over the causes of action asserted in this Complaint pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332(a), and 28 U.S.C. § 1330.

10. Title 28, United States Code, Section 1330 provides federal jurisdiction for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

11. This is a civil action by an alien for torts committed in violation of the law of nations, also referred to as customary international law, including without limitation as reflected in the following international agreements and declarations:

a. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, S. Treaty Doc. No. 100-20 (1988) reprinted in 23 I.L.M. 1027 (1984) (ratified by the United States on October 21, 1994);

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- 1 b. Geneva Convention Relative to the Treatment of Prisoners of War,
2 Common Article 3, Aug. 12, 1949, 6 U.S.T. 3316; 75 U.N.T.S. 135
3 (ratified by the United States on February 8, 1955);
 - 4 c. International Covenant on Civil and Political Rights, Article 7,
5 adopted Dec. 19, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S.
6 171 (entered into force Mar. 23, 1976) (ratified by the United States
7 on June 8, 1992);
 - 8 d. The Charter of the International Military Tribunal, Nuremberg, of 8
9 August 1945, confirmed by G.A. Res. 3, U.N. Doc. A/50 (1946) and
10 G.A. Res. 95, U.N. Doc. A/236 (1946) (signed by the United States
11 on August 8, 1945);
 - 12 e. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N.
13 Doc. A/810, at 71 (1948);
 - 14 f. United Nations Standard Minimum Rules for the Treatment of
15 Prisoners, U.N. GAOR, 24th Sess., Annex, U.N. Doc.
16 A/CONF/611, Annex I, (1957), approved July 31, 1957, E.S.C. Res.
17 663(c), 24 U.N. ESCOR, 24th Sess., Supp. No. 1, at 11, U.N. Doc.
18 E/3048 (1957), amended E.S.C. Res. 2076, 62 U.N. ESCOR, 64th
19 Sess., Supp. No. 1, at 35, U.N. Doc. E/5988 (1977);
 - 20 g. The Convention on the Non-Applicability of Statutory Limitations
21 to War Crimes and Crimes Against Humanity, G.A. Res. 2391
22 (XXIII), Annex, 23 U.N. GAOR, Supp. No. 18, at 40, U.N. Doc.
23 A/7218 (1968);
 - 24 h. Declaration on the Protection of All Persons From Being Subjected
25 to Torture and Other Cruel, Inhuman or Degrading Treatment or
26 Punishment, G.A. Res. 3452 (XXX), U.N. GAOR, 30th Sess., Supp.
27 No. 34, at 91, U.N. Doc. A/10034 (1975); and
 - 28 i. Protocol Additional to the Geneva Conventions of 12 August 1949,
29 and Relating to the Protection of Victims of Non-International
30 Armed Conflicts (Protocol II), Article 5(2)(e), June 8, 1977, 1125
31 U.N.T.S. 609; 26 I.L.M. 568 (1987); S. Treaty Doc. No. 100-2
32 (1987) (signed by the United States on December 12, 1977).
- 33 12. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)(2)-(3).

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13. This Court may exercise personal jurisdiction over Jessen because he is, and at all relevant times was, domiciled in Spokane, Washington.

14. This Court may exercise personal jurisdiction over Mitchell and Jessen because they purposefully availed themselves of the privilege of conducting activities in the State of Washington, and the causes of action alleged in this Complaint arise out of or relate to the Defendants' numerous contacts and residence in the State of Washington.

PARTIES

A. Plaintiff Abu Zubaydah

15. Abu Zubaydah, a current Guantanamo inmate, was the first so-called “high value detainee” subjected to Mitchell and Jessen’s torture program. Born in 1971 in Saudi Arabia, Abu Zubaydah spent his early years travelling around the Middle East before finally planting roots in Mysore, India, where he married a British citizen and began studying computer science. In 1991, looking for purpose, he travelled to Afghanistan and fought there in the wake of the Soviet withdrawal. After sustaining various injuries, he went on to hold various non-combat administrative roles with the mujahideen, concerned generally with internal and local conflicts. The majority of this time—from 1993 to 2000—he was a fundraiser and recruiter for Khalden Training Camp, one of the largest and longest-operating training camps in Afghanistan. Khalden was independent, not controlled by any

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1 terrorist group, and closed in 2000 due to ideological differences with the ascendant
2 Al Qaeda, including a rejection of Al Qaeda's policy of targeting civilians.

3 16. On March 28, 2002, Abu Zubaydah was wounded and captured in
4 Faisalabad, Pakistan by a joint U.S.-Pakistani force and flown to Thailand.
5 Mistakenly believed to be Al Qaeda's third in command, he was briefly interrogated
6 by a highly qualified, Arabic-speaking FBI agent. In response, Abu Zubaydah
7 provided substantial information, including the identity of Khalid Sheik
8 Mohammad, the primary planner of the September 11 attacks. Thereafter, under the
9 supervision of Mitchell and Jessen, he was subjected to an increasingly severe
10 application of interrogation techniques, including isolation, waterboarding on at
11 least 83 occasions, stress positions, cramped confinement, walling, extreme cold,
12 and sleep deprivation, for at least five months. The CIA transferred Abu Zubaydah
13 through a number of different clandestine facilities, and in September 2006 to the
14 U.S. Government detention facility in Guantanamo Bay Naval Base. To date, Abu
15 Zubaydah has never been charged with a crime.

16 **B. Defendant Mitchell**

17 17. James Elmer Mitchell was the principal architect of the CIA's torture
18 program who, at times relevant to this complaint, resided within the Eastern District
19 of Washington. A U.S. citizen, Mitchell was a psychologist at the U.S. Air Force
20 SERE training program at Fairchild Air Force Base in Spokane, Washington. Prior

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1 to becoming an independent contractor for the CIA, Mitchell had spent most of his
2 career inside this program, where he developed and supervised a course involving
3 mock torture in a pretend prisoner-of-war camp in a made-up country called
4 “Spokanistan.” The goal was to prepare U.S. forces for the possibility of being held
5 and tortured by enemies.

6 18. In 2001, Mitchell became an independent contractor for the CIA and,
7 with the help of his partner, Jessen, reverse-engineered the mock-torture techniques
8 used in survival school and deployed them offensively against U.S. detainees, albeit
9 under circumstances far more severe than anything done at survival school or
10 authorized by the U.S. government. He continued working under contract with the
11 CIA from 2005 to 2009 through Mitchell, Jessen and Associates, LLC (“MJA”), the
12 company he co-founded with Defendant Jessen headquartered in downtown
13 Spokane, Washington. MJA eventually was paid more than \$80 million for the
14 torture consulting services Mitchell and Jessen provided to the CIA.

15 **C. Defendant Jessen**

16 19. Defendant John “Bruce” Jessen is a U.S. citizen and a psychologist
17 residing now and at all times relevant to this complaint within the Eastern District
18 of Washington. Jessen was the chief psychologist for the Department of Defense
19 Joint Personnel Recovery Agency, which oversees all four of the SERE training
20 programs, serving there until 2002. From 2002 to 2005, Jessen worked alongside

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1 Mitchell as an independent contractor for the CIA, developing and deploying a
2 program of torture for the purpose of interrogating U.S. captives. From 2005 to 2009,
3 Defendant Jessen continued this work as the President of MJA, with corporate
4 headquarters and offices in Spokane, Washington, reaping considerable personal
5 wealth through contracts with the CIA.

6 **FACTUAL ALLEGATIONS**

7 **A. Defendants Pervert the SERE Program to Develop Their Business Plan
8 Around Physical and Psychological Torture**

9 20. With predecessor programs originating in World War II, the modern
10 Joint Services SERE Agency was formally established by the Department of
11 Defense in 1991 to teach United States enlisted servicemen and women necessary
12 survival skills and resistance to interrogation. Among other things, the program
13 teaches students methods to resist disclosing confidential information if captured by
14 hostile enemy combatants who do not adhere to the Geneva Conventions.

15 21. From 1989 to 1996, Mitchell worked as the chief psychologist at the
16 SERE training school at Fairchild Air Force Base in Spokane, Washington. Jessen
17 helped establish the SERE program and served as the senior SERE psychologist at
18 Fairchild through 2002. Mitchell and Jessen would later seek to justify their
19 proposed interrogation program, giving it a veneer of legality through comparison
20 to the SERE techniques. This was a fraud. First, SERE was designed to *simulate*
21 torture, to a degree, and teach U.S. forces how to withstand it. Second, at SERE the

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1 techniques were implemented under careful controls, and by other U.S. forces
2 expected not to go too far against one of their own. Under Mitchell and Jessen, by
3 contrast, the techniques were implemented against Abu Zubaydah at a pace, for a
4 duration, and with relentless repetition that passed far beyond anything practiced at
5 SERE.

6 22. At “Spokanistan,” the made-up country at the SERE location within
7 Fairchild, Mitchell and Jessen supervised the mock torture of students in pretend
8 prisoner-of-war camps. Based on coercive methods used by communist regimes to
9 produce “debility, dependence, and dread” in U.S. prisoners of war, the purpose of
10 SERE training was to build resistance to the extreme stresses of capture,
11 interrogation, and detention by exposing students to simulated scenarios in a
12 controlled and constructive manner.

13 23. To prepare U.S. forces to withstand possible torture, SERE training
14 techniques included slapping, shaking, stress positions, isolation, forced nudity,
15 body cavity searches, sleep deprivation, exposure to extreme heat or cold,
16 confinement in cramped spaces, dietary manipulation, and waterboarding. It was
17 well known in the SERE community that these techniques present serious
18 psychological and physical risks, and those risks were monitored and controlled.
19 Even so, there were multiple accounts of students who tried to commit suicide, had
20 nervous breakdowns, or died during or soon after attending the school.

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1 24. As SERE was a mock program in a controlled environment, certain
2 safeguards were implemented to mitigate these risks. SERE school instructors were
3 “let loose” on candidates only after being trained, qualified, and certified to use these
4 techniques by licensed psychologists. The instructors were always supervised by and
5 subordinate to psychologists, who monitored for signs of “abusive drift” during role-
6 play to make sure that instructors did not relish the power of playing torturer.

7 25. In addition to training instructors, SERE psychologists observed the
8 training, watching for signals that a student was developing “learned helplessness,”
9 a state of total submission. Psychologists at SERE intervened to prevent students
10 from reaching that state and counseled any cadets who got “too close to the edge.”
11 Indeed, the 2002 SERE manual directed instructors to mitigate this serious
12 psychological risk:

13 Maximum effort will be made to ensure that students do not develop a
14 sense of ‘learned helplessness’ during the pre-academic laboratory . . .
15 . The goal is not to push the student beyond his means to resist or learn
16 (to prevent ‘Learned Helplessness’). The interrogator must recognize
17 when a student is overly frustrated and doing a poor job resisting. At
18 this point the interrogator must temporarily back off, and will
19 coordinate with and ensure that the student is monitored by a controller
20 or coordinator.

21 26. Physical torture was likewise strictly regulated. For example,
22 waterboarding of SERE students was limited in duration—no more than two
23 applications, each lasting 20 to 30 *seconds*—and carefully implemented to assure

1 that water would be dribbled onto the upper lip and little if any water would pass
2 through the cloth into the mouth. As set forth below, it was not so for Abu Zubaydah.

3 27. Mitchell and Jessen's experience with these practices in "Spokanistan"
4 provided the foundation for the interrogation program that they proposed to the CIA
5 and tested on Abu Zubaydah. Mitchell and Jessen repurposed the program as "a
6 weapon against our enemies." The techniques, however, had never been used for
7 interrogation by U.S. forces, nor had learned helplessness ever been qualified as a
8 means for intelligence collection. The contention that such techniques could be
9 effective for intelligence gathering was entirely supposition unmoored to any
10 research or data, as SERE tactics had only been used defensively on volunteers,
11 where the purpose of the exercise was to withstand them, not measure whether they
12 offered any advantage in gaining information. Mitchell and Jessen's baseless
13 hypothesis, of course, was the basis for their business plan. Purportedly proving this
14 thesis through the torture of their first subject, Abu Zubaydah, would lead to valuable
15 government contracts for the detention and interrogation of the many terror suspects
16 then being rounded up by U.S. forces and others.

17 28. Mitchell and Jessen's torture-based interrogation program, while based
18 in SERE, perverted the core defensive purpose and many safeguards of SERE
19 training. The goal of Mitchell and Jessen's new program was to induce, not avoid, a
20 state of learned helplessness in their subjects. Execution of the program—intensified

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1 to go past the point of mental and physical endurance—was devoid of the controls,
2 safety measures, and oversight mechanisms critical to SERE. Indeed, Abu Zubaydah
3 was subjected to at least 83 applications of waterboarding, during which Mitchell
4 would keep a saturated cloth on Abu Zubaydah’s face for the full duration of each
5 pour, sometimes after, and occasionally put the cloth in his mouth. Abu Zubaydah
6 often swallowed copious amounts of water. He was, at the time of his torture, the
7 only known person to have ever been subject to multiple applications of
8 waterboarding. On one occasion, he ceased breathing and had to be resuscitated.

9 29. While SERE students were “taken to the edge of the cliff” but never
10 pushed over, Mitchell and Jessen took Abu Zubaydah far beyond the boundaries of
11 the law and into a netherworld of prolonged and extreme psychological and physical
12 abuse.

13 **B. The CIA Scrambles to Create a Detention and Interrogation Function**
14 **After September 11**

15 30. Following the September 11 attacks, the United States invaded
16 Afghanistan and Iraq, and took other actions collectively described as a War on
17 Terror, which sought to identify, capture, and punish the terrorists responsible for
18 prior attacks and ongoing threats to Western democracy. Reeling from perceived
19 failures to detect and prevent the September 11 attacks, the CIA was keenly focused
20 on its new mandate: to hold and interrogate people suspected of terrorist associations
21 in order to gather intelligence and help avoid a “second wave” of attacks. To meet

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1 those goals, Vice President Dick Cheney urged the CIA to use “any means at our
2 disposal.”

3 31. Torture, of course, was never on the table as a lawful option. While
4 some, including Mitchell and Jessen, may have wished otherwise, the prohibition on
5 torture was and remains absolute. Indeed, in November 2001, CIA lawyers produced
6 a twenty-eight page summary of federal and international law prohibiting the
7 practice. After the September 11 attacks, there was some debate about the moral and
8 practical case for the use of torture “to prevent imminent, significant, physical harm
9 to persons, where there is no other available means.” *Report of the Senate Select
10 Committee on Intelligence Study of the Central Intelligence Agency’s Detention and
11 Interrogation Program*, S. Rep. No. 113-288 (Dec. 9, 2014) (“SSCI Report”) at 19.
12 The U.S. itself has long rejected such arguments in a number of contexts, on the
13 grounds that torture is illegal, ineffective as an interrogation method, politically
14 counterproductive, immoral, and harmful to U.S. servicemembers and foreign policy
15 interests. As Senator John McCain explained in a May 12, 2011 statement on the
16 Senate floor, “if America uses torture, it could someday result in the torture of
17 American combatants. . . . [W]e must bear in mind the likelihood that someday we
18 will be involved in a more conventional war against a state and not a terrorist
19 movement or insurgency and be careful that we do not set a standard that another
20 country could use to justify their mistreatment of our prisoners.” The U.S. Army

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1 Field Manual has long reflected these points, including during the period relevant to
2 this Complaint:

3 Revelation of use of torture by US personnel will bring discredit upon
4 the US and its armed forces while undermining domestic and
5 international support for the war effort. It also may place US and allied
6 personnel in enemy hands at a greater risk of abuse by their captors.
7 Conversely, knowing the enemy has abused US and allied PSs does not
8 justify using methods of interrogation specifically prohibited by the
9 [Geneva Conventions] and US policy.

10 *U.S. Army Field Manual 34-52 “Intelligence Interrogation”* (effective 1992 to
11 2006) at 1-9. And as ends do not justify means, torture has continued to be strictly—
12 and without exception—against the law.

13 32. Further affirming the long-standing prohibition on torture, after Abu
14 Zubaydah was captured, and in anticipation of his interrogation, the CIA asked DOJ
15 attorneys for a “get out of jail free card”—legal memoranda preemptively declining
16 to prosecute counter-terrorism personnel for committing torture. No such cover was
17 provided (though, as discussed below, certain DOJ memos did conclude, in circular
18 fashion, that if a number of techniques were applied in such a way so as to not be
19 torture, they would not be prohibited by anti-torture criminal laws).

20 33. At the time, the CIA lacked any recent institutional experience with
21 custody and interrogation practices. Rather than turn to the many U.S. government
22 components that had such experience, however, CIA officials accepted Mitchell and
23 Jessen’s bid to design a new program, and never received full disclosure concerning

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1 the untested, extreme, and illegal methods Defendants planned to use as part of that
2 program. A later investigation confirmed that in the six months before Abu
3 Zubaydah's capture, the CIA did not confer with U.S. military or law enforcement
4 interrogators to research and develop traditional, non-coercive interrogation
5 practices, nor did it rely on its own past practices or the lessons learned from them.
6 Had it done so, the CIA would have seen evidence that coercive techniques "do not
7 produce intelligence," "will probably result in false answers," and have historically
8 proven to be ineffective. SSCI Report at 18. In addition, the CIA would have known
9 that, following World War II, U.S. allies executed Japanese officers for
10 waterboarding prisoners of war.

11 34. The only documented analysis supporting Mitchell and Jessen's
12 torture-based interrogation program was a December 2001 assessment of the
13 "Manchester Manual" prepared by Mitchell and Jessen, which as described below
14 would ultimately play a critical role in the torture program tested on Abu Zubaydah.
15 SSCI Report at 17.

16 **C. Defendants are Retained for Analysis and Instead Implement a Torture**
17 **Program**

18 35. In or around December, 2001, Mitchell pitched himself and Jessen for
19 the job of analyzing the "Manchester Manual," an Al Qaeda-generated document
20 that included purported strategies to resist interrogation that British anti-terrorism
21 police recovered in a May 2000 raid on a suspected Al Qaeda safe house in

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1 Manchester, England. Neither Mitchell nor Jessen had ever met an Islamist or a
2 terrorist at that time, and neither possessed any “specialized knowledge of Al-Qaeda,
3 a background in terrorism, or any relevant regional, cultural, or linguistic expertise.”
4 SSCI Report at 21. Mitchell’s perception was colored by *The Arab Mind*, a 1973
5 book that has been heavily criticized as simplistic, stereotyping, and Islamophobic.
6 Notwithstanding his lack of experience, Mitchell confidently told CIA officials that
7 they “could do with having someone like [him] go through” the Manchester Manual
8 to inform the CIA “what the terrorists who wrote it would look like and behave like.”

9 36. In December 2001, despite having no field experience with
10 interrogation nor any relevant background knowledge, Mitchell and Jessen signed a
11 contract with the CIA’s Office of Technical Service to review the Manchester
12 Manual. For their services, each was paid \$16,000.

13 37. After a few days at CIA headquarters in Langley, Virginia, Mitchell
14 and Jessen drafted their report, titled *Recognizing and Developing Countermeasures*
15 *to Al-Qa’ida Resistance to Interrogation Techniques: A Resistance Training*
16 *Perspective*. They concluded that “[a] sophisticated level of resistance training is
17 available to high risk Al Qaeda operatives,” and proposed countermeasures to defeat
18 that resistance. *Senate Committee on Armed Services Inquiry into the Treatment of*
19 *Detainees in U.S. Custody*, Nov. 20, 2008, at 7.

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1 38. The “Mitchell Paper” (as the assessment came to be known) proposed
2 countermeasures that, per Mitchell, were based on the psychological and physical
3 techniques he had used to train U.S. forces at the SERE school in Spokane,
4 Washington, where Jessen was still the chief psychologist. Among the practices
5 recommended to overcome resistance training, Defendants proposed “walling,”
6 slaps to the face and abdomen, putting a detainee in stress positions, and “watering,”
7 which involved multiple uses of water as a psychological torture weapon.

8 39. Defendants’ theory was that these countermeasures would induce a
9 state of “learned helplessness” wherein detainees became passive, compliant, and
10 unable to resist their interrogators’ demands for information. The theory of “learned
11 helplessness” was originally conceptualized in 1967 following experimentation on
12 dogs who had received random and frequent electric shocks. It was predicated on
13 the test subject’s inability to control or impact their own situation. Dogs that had
14 been subjected to uncontrollable pain and deprived of any control or influence over
15 their suffering “learned” to become helpless and, collapsing into a complete state of
16 passivity, abandoned any attempt to escape their confinement or future pain. As
17 applied to humans, the assumption was that a person who recognized that no actions
18 or words would alter or ameliorate the negative stimuli inflicted on them would, like
19 the dogs in the experiment, be induced into a state of learned helplessness. Of course,
20 dogs were never interrogation subjects, and the proposed link between learned

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1 helplessness in dogs and successful interrogation was, to say the least, irrational and
2 obscene.

3 40. Nevertheless, Mitchell and Jessen's thesis, that the infliction of
4 uncontrollable physical and mental pain would "break" interrogation subjects and
5 ultimately lead to valuable intelligence, would become the cornerstone of the
6 program they tested on Abu Zubaydah and implemented on others. As the CIA later
7 explained in a December 30, 2004 memorandum, "[t]he goal of interrogation is to
8 create a sense of learned helplessness and dependence conducive to the collection of
9 intelligence in a predictable, reliable, and sustainable manner...."

10 41. Mitchell's theory was flawed and dangerous from its inception.
11 Inducing learned helplessness to produce quality intelligence is illogical, as
12 individuals in a state of learned helplessness—who are psychologically incapable of
13 taking action to improve their situation—would not be "motivated" or "encouraged"
14 to talk to end their torture, much less cooperate with interrogators in the manner
15 hypothesized by Mitchell and Jessen. They would, if anything, lie in a corner like
16 tortured dogs. The CIA understood this; in reviews conducted prior to September
17 11, it had concluded that "inhumane physical or psychological techniques are
18 counterproductive" and consistently yield unreliable and false answers. SSCI Report
19 at 19. But desperate to make up for past failures and avert future attacks, individuals

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1 at the CTC were too eager to accept the confident bluster of Mitchell and Jessen
2 when they promised results from their proposed hardline approach.

3 **D. Joint Forces Capture Abu Zubaydah and He Cooperates with the FBI**

4 42. On March 28, 2002, a joint force of U.S. and Pakistani agents captured
5 Abu Zubaydah in a raid on a compound in Faisalabad Province, Pakistan. He was
6 severely wounded during the raid by near-fatal bullet wounds. He was stabilized and
7 flown to a safe house in an undisclosed location, presumed to be Thailand, where he
8 would be provided with medical treatment and, more importantly, interrogated.

9 43. Abu Zubaydah's capture was publicly lauded as "a very serious blow
10 to al-Qaeda" and, as he was then (incorrectly) believed to be part of "Osama bin
11 Laden's inner circle," he was presented as a valuable source of intelligence and the
12 key to avoiding a second wave of attacks on the United States.

13 44. Abu Zubaydah's value as an information source was overstated. U.S.
14 intelligence believed he had connections to high-profile jihadists, including within
15 Al Qaeda. The CIA came to believe—based on 2001 testimony that would later be
16 recanted—that Abu Zubaydah was the "number three" man in Al Qaeda and that he
17 had authored the Manchester Manual. This was not the case, and the CIA has since
18 learned and conceded the truth: Abu Zubaydah did not plan the September 11 attacks
19 or have any participation in them; he was not a member of Al Qaeda, nor did he hate
20 America; and he was not the author of the Manchester Manual. SSCI Report at 21.

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1 In fact, as known by the FBI prior to his capture, Abu Zubaydah had only limited
2 and tangential interactions with certain low-level Al Qaeda members. He had no
3 interaction with bin Ladin.

4 45. On or about April 1, 2002, Abu Zubaydah's rendition flight landed in
5 Thailand. An FBI team was on site, led by an agent who spoke Arabic and had
6 experience interrogating members of Al Qaeda. The team immediately began
7 interrogating Abu Zubaydah, using photographs and other tools to elicit intelligence
8 on various topics. SSCI Report at 25. Their strategy was immediately successful.
9 Despite his wounds, Abu Zubaydah confirmed his identity, expressed a desire to
10 cooperate, and provided background information on his activities. *Id.* Within the first
11 hour of questioning, he provided valuable information regarding a planned attack,
12 and details such as "the sources he had received money from, where the money was
13 going, the individuals involved, and logistical and operational details, along with
14 other valuable intelligence." *Id.* Upon receipt of the information, the CIA confirmed
15 it was reliable intelligence, and that the planned attack was successfully thwarted.

16 46. Within hours, Abu Zubaydah's medical condition deteriorated, and he
17 was secretly transferred to a local hospital. Abu Zubaydah required a breathing tube,
18 rendering him unable to speak, but he still continued to respond to the agents'
19 questions to the degree he was able.

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1 47. On April 10, two days after he was extubated, Abu Zubaydah reviewed
 2 photographs of suspects provided by the FBI and voluntarily provided vital
 3 intelligence that had never been previously confirmed: he identified Khalid Shaykh
 4 Mohammad as “Mokhtar,” the mastermind behind the September 11 attacks. SSCI
 5 Report at 25, 53-54.

6 48. Abu Zubaydah’s cooperation was a deliberate decision on his part—
 7 and a far cry from the resistance Mitchell had predicted. Speaking to a CIA
 8 psychologist in February 2003, Abu Zubaydah expressed that prior to his capture he
 9 did not believe it possible to withhold information from interrogators. In fact, when
 10 he worked at the Khalden Training Camp, Abu Zubaydah advised recruits that such
 11 cooperation was expected and should be accounted for, stating that “brothers should
 12 be able to expect that the organization will make adjustments to protect people and
 13 plans when someone with knowledge is captured.” SSCI Report at 48.

14 **E. Mitchell Obtains Another Contract to Consult on Interrogations of Abu**
 15 **Zubaydah**

16 49. On April 1, 2002, the CIA contacted Mitchell with a request that he
 17 “provide real-time recommendations to overcome Abu Zubaydah’s resistance to
 18 interrogation.” SSCI Report at 26. This was despite the fact Abu Zubaydah was not
 19 resisting the FBI’s investigation. Quite the opposite: he was cooperating and had
 20 provided valuable intelligence. At this time, Abu Zubaydah was viewed, however
 21 improbably, as a “high value” detainee with significant ties to Al Qaeda and Osama

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1 bin Laden, already known to be the architect of the September 11 attacks. The CIA,
2 facing what it believed to be a life-threatening “short fuse” situation, was assembling
3 an interrogation team. Even though he had never interrogated a person outside of
4 mock interrogations at the SERE program, Mitchell was the only candidate
5 considered. He was already a contractor with the CIA and, while some had
6 denigrated his past experience as “playacting” and called him a “schoolhouse
7 psychologist,” he had been a psychologist at “Spokanistan,” had analyzed the
8 Manchester Manual, and had developed countermeasures to resistance training. He
9 was therefore thought to be knowledgeable despite the total absence of any real-
10 world experience.

11 50. Around April 3, 2002, Mitchell negotiated the terms of a new
12 independent contract with the CIA to provide “psychological consultation to CTC
13 in debriefing and interrogation operations for Quick Response Tasking.” His
14 contract promised him \$1,000 per day for work done in the United States and \$1,800
15 per day for work done abroad, four times the rate of a standard interrogator. He also
16 received \$17,000 for travel expenses. Now that he had a long-term contract, he could
17 use his position to encourage the CIA to adopt the practices he had developed with
18 Jessen in December to induce learned helplessness in detainees.

19 51. Days after negotiating his contract for “applied research” with the CTC
20 in April 2002, Mitchell left for Thailand to interrogate Abu Zubaydah. Mitchell’s

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1 goal was not just to get intelligence from Abu Zubaydah; he sought to test and refine
2 the methods he had proposed in the Mitchell Paper in December, determine how far
3 he could go, and ultimately gain a contract that went beyond Abu Zubaydah and
4 made him the central authority on interrogating all suspects in the War on Terror—
5 an incredibly broad mandate that would, and ultimately did, come with massive
6 financial benefits. Before leaving, Mitchell and Jessen travelled to Philadelphia to
7 meet with a psychologist in the field of learned helplessness, Martin Seligman, and
8 other government psychologists to discuss the applicability of the theory. Mitchell
9 and Jessen used the information gained in these meetings and conferences to further
10 develop their hypothesis that learned helplessness could be used as an offensive
11 information gathering technique, a hypothesis they were about to test on their first,
12 unwilling subject.

13 **F. Jessen Develops Coercive Techniques in Parallel and Ultimately Joins**
14 **Mitchell**

15 52. Meanwhile, in the United States, Jessen had been promoting SERE
16 practices as a tool to combat the War on Terror. In March 2002, he had prepared
17 slide presentations for future Guantanamo interrogators. His presentation, entitled
18 “Al Qaeda Resistance Contingency Training Based on Recently Obtained Al Qaeda
19 Documents,” encouraged the same practices Jessen and Mitchell had proposed in
20 connection with their December paper on the Manchester Manual: the usefulness of
21 “exploitation” interrogation, isolation and degradation, and how to exert control over

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1 a detainee with methods that were not within the protections of the Geneva
2 Conventions. Jessen's presentations were transformed into a curriculum for
3 interrogators.

4 53. In or around April 2002, Jessen, together with the Joint Personnel
5 Recovery Agency ("JPRA") (which was tasked with supervision of all the U.S.
6 military survival schools, including the Personnel Recovery Academy in Spokane),
7 prepared a proposal to develop a coercive interrogation plan. A draft of the plan
8 recommended techniques specifically designed to shame and humiliate Muslims,
9 including the use of dogs, female interrogators, debased sanitary conditions, and
10 nudity. Jessen wrote himself into the plan, recommending that such interrogations
11 be held at an offsite "exploitation facility" under the direction of the "JPRA Senior
12 SERE Psychologist." When questioned about his credentials to lead such a program,
13 Jessen touted his experience *observing* numerous "interrogations" at SERE school.

14 54. However, Jessen wanted to work for the CIA, too. While working for
15 the Pentagon and not yet read-in to the CIA program, Jessen maintained contact with
16 Mitchell at the black site. When Mitchell called Jessen to consult on re-creating a
17 SERE school interrogation bunker, for example, Jessen helped without hesitation. In
18 or around May 2002, Jessen signed his own independent contract with the CIA,
19 specifying that he would perform "applied research," among other things.

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1 55. Jessen dove into his new position from Spokane, Washington. With
2 Mitchell, he began developing the curriculum to train future interrogators. The
3 curriculum was practically identical to the slide presentation Jessen had prepared for
4 Guantanamo-bound interrogators earlier that year. At this point, Jessen had yet to
5 conduct a non-SERE confined interrogation and Mitchell's first and only real
6 interrogation experience was torturing Abu Zubaydah, which yielded nothing.

7 **G. Defendants Torture Plaintiff as Part of their Experimental Program**

8 *Abu Zubaydah is “Conditioned” under Mitchell’s Direction*

9 56. Despite the FBI's success, Mitchell somehow convinced the CIA that
10 Abu Zubaydah was still withholding valuable information, and coercive techniques
11 were called for to overcome his purported resistance. For Mitchell, this was a critical
12 tryout of his ambitious and lucrative proposal. If he could get new information from
13 Abu Zubaydah using coercive techniques, that would validate his learned
14 helplessness theory and the aggressive methods that he had proposed, opening the
15 door to greater control and lucrative contracts for the oversight of other CIA
16 detainees.

17 57. On April 13, 2002, a CIA officer entered the hospital room where Abu
18 Zubaydah was recovering and told Abu Zubaydah that he had “a most important
19 secret that [we] needed to know.” SSCI Report at 27. This framing, that every person

1 had a secret to protect, was part of the script Mitchell had created, and kicked off the
2 CIA's takeover of the Abu Zubaydah interrogation.

3 58. On April 16, on Mitchell's recommendation, Abu Zubaydah was
4 medically sedated and transferred from his hospital room to a CIA black site in
5 Thailand, where coercive techniques were immediately implemented. The sedation
6 itself was the start of the interrogation: it was intended to make Abu Zubaydah wake
7 up disoriented, with no knowledge of where he was and how he got there. At the site
8 Abu Zubaydah was hooded, with a bag on his head, SERE-style; stripped naked;
9 and, in a perverse twist on SERE training in which students were given a safe word
10 to stop their torture training, told he could stop the mistreatment at any time—but
11 only if he revealed details of a second wave of attacks on the United States.

12 59. Mitchell had further ideas on how to “condition” Abu Zubaydah. For
13 the first six to eight weeks following his release from the hospital, Mitchell kept Abu
14 Zubaydah in “an all-white room that was lit 24 hours a day,” where he “was not ...
15 provided any amenities.” “[H]is sleep [was] disrupted” by “loud noise [that was]
16 continuously fed into his cell.” SSCI Report at 26, 55. The cell was kept extremely
17 cold, and Abu Zubaydah, who was naked, was provided with minimal food. He was
18 shackled to a chair almost continuously, and only unshackled to use the “toilet”—a
19 bucket. He was not allowed to sleep, and despite—or perhaps because of—the cold
20 temperature, he was sprayed with water to wake him whenever he began to fall

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1 asleep. *Id.* Additionally, at Mitchell's direction, medical attention was intentionally
2 withheld. Specifically, dressings on Abu Zubaydah's wounds would go unchanged
3 and at times the wounds would reopen because of the physical mistreatment that he
4 suffered.

5 60. Mitchell directed proceedings from another room as interrogators
6 repeatedly asked the confused Abu Zubaydah the same Kafkaesque question for
7 hours: to disclose "the secret" he was purportedly hiding. Abu Zubaydah was not
8 presented with specific prompts, but bombarded with open-ended questions that did
9 not target or seek information on a specific event; it was a fishing expedition for a
10 hypothetical second wave of attacks on the United States. In a deliberate echo of
11 Mitchell's approach at SERE, Abu Zubaydah was also told that the treatment of his
12 friends and co-captors depended on his answer and cooperation. *Id.*

13 61. The purpose behind these tactics was to disorient and distress Abu
14 Zubaydah to the extent that, according to Mitchell's theory, he would develop a
15 sense of learned helplessness. Mitchell explained the concept to the team in Thailand
16 in terms of the original experiment—"when you apply electric shocks to a caged
17 dog, after a while he's so diminished he can't resist"—and made clear that Abu
18 Zubaydah was to be considered and treated like "a dog in a cage." Here, Mitchell's
19 lack of interrogation experience was apparent in the lack of any logical connection
20 between a caged dog and a human prisoner with potentially valuable intelligence.

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1 62. Even though Abu Zubaydah did not provide any information during the
2 sleep deprivation period, Mitchell justified these extreme techniques, reporting that
3 the approach was successful in weakening Abu Zubaydah’s “resistance.” But, in an
4 effort to obtain permission to engage in more aggressive tactics, such as his request
5 for extended sleep deprivation, Mitchell also reported that the “extremely resilient”
6 Abu Zubaydah continued to resist interrogation. It was never considered that Abu
7 Zubaydah, rather than resisting interrogation, had already provided all responsive
8 information that he possessed. Mitchell extended Abu Zubaydah’s sleep deprivation
9 over the objections from the medical team at the black site. The medical team
10 ultimately intervened at the seventy-six hour mark and allowed Abu Zubaydah to
11 sleep for three hours.

12 63. When interrogators returned to Abu Zubaydah’s cell, he provided them
13 with information about a planned attack and the identity of “Mokhtar”—the same
14 information that he had already provided to the FBI in the first weeks following his
15 capture.

16 64. A little later, with prompts from FBI interrogators, Abu Zubaydah
17 discussed two bumbling jihadist-aspirants who discussed swirling uranium in a
18 bucket in the hopes of constructing a dirty bomb. Jose Padilla, one of the two men
19 described, was later arrested in May 2002 on intelligence from an unrelated source;

1 as the CIA later admitted, he was nowhere near being able to build a dirty bomb.
2 SSCI Report at 264, 266.

3 65. Over the following month, Mitchell and Jessen experimented with a
4 variety of interrogation approaches, including rewarding Abu Zubaydah for
5 instances of cooperation, such as providing him with clean clothes and better food
6 in exchange for information on Al Qaeda, which simply duplicated other information
7 he had already provided. Nevertheless, Mitchell continued to push to try more
8 aggressive interrogation methods, claiming that Abu Zubaydah was resisting
9 providing intelligence about a hypothetical second wave of attacks. To that end,
10 Mitchell returned to the United States on May 26, 2002, to recommend a formal list
11 of SERE-style interrogation methods.

12 Defendants Seek Authority for “Corrective” and “Coercive” Measures

13 66. Between late May and early June of 2002, Mitchell worked in the
14 United States to get approval from CIA officials to use even more excessive hardline
15 interrogation measures. He wanted the latitude to explore “corrective” techniques—
16 slaps, grabs, holds, pressing, and yelling—alongside “coercion,” considered the
17 most frightening aspect of SERE training.

18 67. Mitchell’s specific proposals included putting Abu Zubaydah in a room
19 with a cadaver, waterboarding, placing electrical nodes on his tooth to shock and
20 cause pain, and injecting him with a drug that would paralyze his central nervous

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1 system and make him unable to breathe. Jessen joined Mitchell at CIA headquarters
2 in June, marking the first time since Abu Zubaydah’s capture that the two architects
3 of his torture were back together in person. It was at these meetings that they
4 whitewashed their proposed methods—the torture-based interrogation program that
5 they intended to test on Abu Zubaydah—with the deliberately innocuous-sounding
6 term “enhanced interrogation techniques.” Even though the legality of Mitchell and
7 Jessen’s techniques was dubious at best, they gained the support of at least some
8 officials at CTC, who encouraged the two psychologists to think big. However, there
9 had been no approval from CIA legal authorities or the DOJ.

10 68. During this time in June 2002, Abu Zubaydah was placed in complete
11 isolation to “disorient” him and keep him off-balance for the next round of
12 interrogation. This treatment was justified by Mitchell and Jessen’s false claim that
13 Abu Zubaydah had stopped cooperating with interrogators. In truth, it was an excuse
14 to justify the next phase—the stepped-up torture program. In other words, Abu
15 Zubaydah was punished based on Mitchell and Jessen’s lies about his resistance to
16 interrogation solely so they could apply even harsher interrogation techniques.

17 69. Around the same time, Mitchell and Jessen began to take turns in role
18 as the “bad guy.” Previously criticized at SERE conferences as “unethical” for
19 playing both interrogator *and* psychologist, Jessen did not limit himself to a single

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1 role in torturing Abu Zubaydah. Nor did Mitchell. They were operating with no
2 controls whatsoever.

3 70. At a July 8, 2002 meeting at Langley, Mitchell and Jessen proposed a
4 roadmap for their “enhanced interrogation” techniques. Immediately after, they
5 prepared a follow-up memo detailing the proposed techniques that would be tried on
6 Abu Zubaydah. The proposed techniques, couched in misleadingly vague, clinical
7 language, were not described in terms of uncontrollable and prolonged pain and fear
8 of death. Instead, they were purportedly intended to “dislocate the subject’s
9 expectation concerning how he is apt to be treated and instill fear and despair.” They
10 included:

- i) attention grasp (grasping the subject's collar with both hands and dragging them towards the interrogator);
 - ii) walling (bouncing the subject off of a “flexible wall,” though initially they used a cement wall);
 - iii) facial hold (holding the subject’s head immobile with both hands);
 - iv) facial slap/insult slap (open-handed slap to the subject’s face);
 - v) cramped confinement (confining the subject to large box or space that restricts movement for up to 18 hours, or to a smaller confinement box for one hour, though in practice Abu Zubaydah was restrained in the small box for several hours at a time until he lost consciousness);

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- 1 vi) wall standing (inducing fatigue by forcing the subject to support his
- 2 own body weight against a wall using just his fingertips);
- 3 vii) stress positions (forcing the subject to hold his arms above his head or
- 4 to kneel and lean back at 45-degree angle, and to hold either position
- 5 for a prolonged period);
- 6 viii) sleep deprivation (implemented with no proposed time limit, but the
- 7 report noted that the Guinness Book of World Records record for sleep
- 8 deprivation was 205 hours);
- 9 ix) waterboarding (binding the subject to an inclined bench, placing a cloth
- 10 over his forehead and eyes, saturating the cloth with water “from a
- 11 canteen cup or small watering can,” and then lowering the cloth over
- 12 his nose and mouth, at which point the “subject [is] exposed to 20 to 40
- 13 seconds of restricted airflow,” *i.e.*, drowned, and then permitting a few
- 14 short breaths before the process is repeated);
- 15 x) diapers (recommended because Abu Zubaydah was considered
- 16 “fastidious” regarding his personal hygiene, and in practice used
- 17 primarily during travel);
- 18 xi) insects (threatening to place “stinging insects” into the cramped
- 19 confinement box with the subject, but only actually placing “harmless

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1 insects,” with the goal of increasing his “sense of dread”—in practice
2 they put actual scorpions in proximity to Abu Zubaydah); and
3
4 xii) mock burial (placing the subject in a coffin-shaped box with hidden air
5 holes, transporting the box to a mock-burial location, lowering it into
6 the ground, and shoveling dirt on top of it to make the subject believe
7 he is being buried alive, at which point a “rescuer” interrupts the
8 process and then uses the subject’s fear of being buried alive again to
motivate him to cooperate).

9 July 8, 2002, Mitchell Memo to CTC re: Description of Physical Pressures.

10 71. As Mitchell proposed, he would start with a stern warning to Abu
11 Zubaydah of a worse fate if he did not reveal details of future attacks, after which he
12 would lock him in a coffin for several hours. Jessen would then introduce himself to
13 Abu Zubaydah by slapping him across the face. After, both would conduct “fear and
14 despair rounds,” followed by “threat and rescue,” which would include a mock burial
15 in the coffin, noting that they would take care when shoveling dirt to avoid coving
16 the airhole and actually burying Abu Zubaydah alive.

17 72. After the meeting, despite the continued lack of approval to use the
18 proposed techniques, Mitchell and Jessen signed new, lucrative contracts that
19 specified the experimental, research-oriented aspects of their roles and offered them
20 hundreds of thousands of dollars. These and other contracts referred to Mitchell and

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1 Jessen's "applied research," with descriptions of the work that would be done
 2 domestically and abroad: in the United States, they were tasked with developing
 3 methodologies and advising the CIA on their application, while the overseas portion
 4 involved "conducting specified, time-limited research projects." Mitchell and Jessen
 5 were conducting an uncontrolled study in which Abu Zubaydah was their guinea
 6 pig, with the goal of applying their findings to other detainees.

7 73. On July 24, 2002, the CIA, apparently unwilling to approve Mitchell
 8 and Jessen's proposal unilaterally, sent a memo to DOJ attorney John Yoo seeking
 9 legal clearance for the proposed techniques. Referencing SERE, the memo carried
 10 forward Mitchell and Jessen's misleading statements concerning the precedent of
 11 the SERE program and the presumption of recovery:

12 [W]hile the interrogation techniques mentioned above (attention grasp,
 13 walling, facial hold, facial slap (insult slap), cramped confinement, wall
 14 standing, stress positions, sleep deprivation, waterboard, and mock
 15 burial) are all administered to students in the U.S. in a harmless way,
 16 with no measurable impact on the psyche of the volunteer, we do not
 17 believe we can assure the same here for a man forced through these
 18 processes and who will be made to believe this is the future course of
 19 the remainder of his life. While the CIA will make every effort possible
 20 to ensure that the subject is not permanently physically or mentally
 21 harmed, some level of risk still exists. The intent of the process is to
 22 make the subject very disturbed, but with the presumption that he will
 23 recover.

24
 25 *Department of Justice Office of Professional Responsibility Report, Investigation*
 26 *into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the*

1 *Central Intelligence Agency’s Use of “Enhanced Interrogation Techniques” on*
2 *Suspected Terrorists* (July 29, 2009), at 54-55.

3 74. Contrary to this sterilized description, the Defendants in fact planned to
4 implement their proposed interrogation techniques in a manner that would be a stark
5 departure from the controlled environment, and limited application, of SERE
6 training. Ignoring the science—and turning a blind eye to research showing that
7 SERE training can cause serious mental health damage—neither Mitchell nor Jessen
8 disclosed the full severity of their implementation, or explained why or how Abu
9 Zubaydah would recover from more extreme torture than SERE students had ever
10 endured. To seek approval of the enhanced torture program, Mitchell and Jessen
11 intentionally likened their proposed techniques to those utilized in the SERE
12 program, while withholding from government lawyers that the critical safety
13 protocols present in the SERE program would be abandoned and the techniques
14 employed would go far beyond those employed at SERE.

15 75. In or around July 2002, Mitchell and Jessen returned to Thailand. Once
16 they arrived, they built the interrogation bunker, including a plywood “walling”
17 board, a box resembling a coffin, and an even smaller box designated the “dog box.”

18 76. On August 1, 2002, the DOJ’s Office of Legal Counsel issued a legal
19 memorandum—later dubbed one of the “torture memos”—opining that to be subject
20 to federal criminal prosecution, an interrogator must cause “longer-term mental

1 harm” or “intense pain or suffering of the kind that is equivalent to the pain that
2 would be associated with serious physical injury so severe that death, organ failure,
3 or permanent damage resulting in a loss of significant body functions will likely
4 result.” *Memorandum for White House Counsel Re: Standards of Conduct for*
5 *Interrogation under 18 U.S.C. §§ 2340-2340A* (Aug. 1, 2002) at 13.

6 77. In a second legal memorandum dated August 1, 2002, and directed to
7 the CIA’s general counsel, the DOJ’s Office of Legal Counsel opined, based on a
8 number of assurances originating from Mitchell and Jessen, that the techniques did
9 not cause the kind of pain associated with “serious physical injury,” and that the
10 techniques would not give rise to criminal liability. *Memorandum for John Rizzo,*
11 *Acting General Counsel of the Central Intelligence Agency: Interrogation of Al*
12 *Qaeda Operative* (Aug. 1, 2002) at 10. The memo went on to opine, again accepting
13 assurances originating from Mitchell and Jessen, that the procedures would not lead
14 to “prolonged mental harm,” and that they would not violate the federal statute
15 criminalizing torture, Title 18 U.S.C. “Section 2340A.” *Id.* at 18. The memo to the
16 CIA specifically referenced Mitchell and Jessen’s roles, noting that as part of an
17 “increased pressure phase, Zubaydah will have contact only with a new interrogation
18 specialist, whom he has not met previously [i.e., Jessen], and the [SERE] training
19 psychologist who has been involved with the interrogations since they began [i.e.,
20 Mitchell].” *Id.* at 1.

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1 78. While these memos engaged in circular logic, relied on Mitchell and
2 Jessen's self-serving (and ultimately false) predictions concerning the limited harm
3 to be caused, and pertained only to criminal prosecution rather than the lower
4 standards applicable to civil matters and international treaty obligations, Mitchell
5 and Jessen disregarded these limitations and perverted SERE training techniques to
6 enhance the brutality of their interrogation methods. Specifically, going forward,
7 Mitchell and Jessen would point to the August 1, 2002 DOJ memo, claiming—
8 contrary to the plain meaning of the memo—that it authorized the following
9 techniques: (1) attention grasp; (2) walling; (3) facial hold; (4) facial or insult slap;
10 (5) cramped confinement; (6) insects; (7) wall standing; (8) stress positions; (9) sleep
11 deprivation; and (10) waterboarding. The conclusion that these techniques would not
12 violate criminal law—whatever its application in the civil context—was premised
13 on factual representations that their use would be limited or constrained in material
14 ways cited in the DOJ memo. For example, Defendants claimed (falsely) that the
15 techniques could cause no permanent harm because they caused no such harm to
16 SERE participants, and they withheld that the critical safety protocols in place at
17 SERE would be cast aside when these techniques were applied to Abu Zubaydah.
18 They also withheld that the techniques would be applied in combinations, for
19 durations, and with an intensity and repetition never used at SERE. Defendants went
20 well beyond the limitations in the DOJ memo, including by applying extended

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1 water-board treatment and cramped confinement with such severity that they
2 amounted to mock execution and mock burial.

3 Defendants Take the Severity of their Torture Program to Unauthorized
4 Extremes

5 79. On August 4, 2002, Mitchell and Jessen commenced their new regime
6 with a day of nearly ceaseless torture. First, accompanied by security personnel, they
7 entered Abu Zubaydah's cell where he was (as he was nearly always forced to be)
8 completely naked. Mitchell collared Abu Zubaydah with a rolled towel and slammed
9 him against a concrete wall, rather than the plywood "walling" wall called for in the
10 proposed interrogation plan. SSCI Report at 68-69, 70 n. 83. In his diary, Abu
11 Zubaydah described the banging as so strong that he felt like his "skull was in
12 pieces."

13 80. Mitchell then grabbed Abu Zubaydah's face to show him the coffin-
14 like box and demanded additional information on terrorist operations planned
15 against the United States, including the names, phone numbers, email addresses,
16 weapon caches, and safehouses of anyone involved. Every time Abu Zubaydah, who
17 was visibly anxious, denied having additional information, Mitchell slapped him or
18 slammed him against the wall. *Id.* at 69. This continued even after Abu Zubaydah
19 fell to the floor, in what Roger Aldrich, a fellow SERE instructor present at the time,
20 described as "full-blown, full-tilt, bozo wild person role-play mode."

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1 81. Abu Zubaydah was then shoved into the coffin-like box with a waste
2 bucket, drinking water, and Ensure (a protein shake). After four hours, Jessen opened
3 the coffin, wrapped a towel noose around Abu Zubaydah’s neck, and yanked him
4 out, spilling the toilet bucket over Abu Zubaydah’s gaping leg wound. Jessen
5 dragged him to the plywood walling wall, which now covered the concrete wall
6 where Mitchell had bashed Abu Zubaydah’s head earlier that day. Jessen slammed
7 Abu Zubaydah’s head so hard that he fell and momentarily lost his vision. Jessen
8 continued to “wall” Abu Zubaydah until he collapsed, and then Jessen slapped him
9 as he laid on the floor. Jessen became so frustrated that he grabbed Abu Zubaydah’s
10 head with his hands and started banging it against the wall.

11 82. Around 5 p.m. that same day, Jessen squeezed Abu Zubaydah into a yet
12 smaller box—the “dog box”—measuring 21 inches in one dimension, and 30 inches
13 in the other two. Fitting into the “dog box” forced Abu Zubaydah into a fetal position
14 and reopened his leg wound, causing it to bleed. *Id.* at 71. Hot and sweaty inside the
15 box, Abu Zubaydah felt like “[he] was going to explode.” After approximately one
16 hour, guards opened the box. Mitchell and Jessen backed Abu Zubaydah up against
17 the plywood wall and told him that he needed to cooperate to avoid “bring[ing] more
18 misery onto himself.” They punched him repeatedly, seemingly trying to compete
19 with the other for the hardest punch. They sought expressions of obedience.

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1 83. At 6:15 p.m.—still on the same day—ignoring CIA legal advice that
2 “the waterboard constitutes a threat of imminent death,” Mitchell and Jessen
3 waterboarded Abu Zubaydah. Despite having requested and received permission
4 only for a controlled application of the technique—the method used on SERE
5 students—Mitchell and Jessen’s implementation was, in practice, far more
6 aggressive. They put a black cloth over Abu Zubaydah’s face and poured water far
7 exceeding the volume in the SERE training, audibly counting the duration of each
8 pour. Abu Zubaydah swallowed copious amounts of water. They also kept the
9 saturated cloth on Abu Zubaydah’s face for the full duration of each pour, sometimes
10 after, and occasionally put the cloth in his mouth.

11 84. Receiving multiple cycles, sometimes in quick succession, Abu
12 Zubaydah was, at the time of his torture, the only known person subjected to multiple
13 applications of waterboarding. Mitchell attempted to justify the departure from the
14 SERE program and its safeguards, noting that waterboarding Abu Zubaydah was
15 “for real” and needed to be convincing (presumably meaning that it needed to
16 convince Abu Zubaydah that he was being drowned). Abu Zubaydah was convinced,
17 and lost control of his bladder while being waterboarded.

18 85. At the end of this day, Mitchell and Jessen sent CIA Headquarters a
19 clinical, sterilized summary of the day’s interrogation, and maintained data and

1 records concerning the techniques used. The CIA would later refer to the torture
2 inflicted on Abu Zubaydah as “guinea pig research on human beings.” *Id.* at 126.

3 86. Abu Zubaydah said that he was ready to talk after the first
4 waterboarding attempt. Mitchell and Jessen nonetheless decided to continue the
5 process. *Id.* at 471 n. 2578. They tortured Abu Zubaydah on a twenty-four hour
6 cycle, waterboarding him multiple times a day, along with “walling,” slapping,
7 stress-positions, confinement in the “coffin” and “dog box,” facial holds, and
8 continuous sleep deprivation. *Id.* at 70.

9 87. On at least one occasion, Mitchell and Jessen told Abu Zubaydah that,
10 if he did not give them the information they demanded, he would leave the facility
11 in the coffin-like box. *Id.* at 70-71. Mock execution is not an approved SERE
12 technique, and threats of imminent death are forbidden by U.S. law. Mitchell and
13 Jessen, however, were undeterred. As to mock burial, mock execution, and in other
14 respects, Defendants stepped outside the SERE manual and well beyond the
15 representations and limitations that they had offered when seeking authority to
16 implement their interrogation program.

17 88. Abu Zubaydah frequently cried, begged, pleaded, and whimpered for
18 the torture to stop but, in response to the same open-ended demands for information,
19 he continued to deny that he had any additional information on current threats to the
20 United States. *Id.* at 71. He was described as being compliant with requests, but

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1 sometimes so hysterical and distressed that he was unable to communicate. *Id.* at 71-
2 72. Defendants took clinical note of the progress, and refined, recalibrated, and
3 adjusted their approach based upon Abu Zubaydah's reactions.

4 89. Members of the CIA team were distressed by watching the
5 interrogation, and some were even worried that this approach would kill Abu
6 Zubaydah. *Id.* at 44. By the fifth day of the torture program, members of the CIA
7 team reported being profoundly disturbed and expressed concerns about the limits
8 of what was being done. By the sixth day of the interrogation, the CIA team had
9 come to the collective conclusion that it was "unlikely" that Abu Zubaydah
10 possessed the information that they were seeking. By the seventh day, it was "highly
11 unlikely." *Id.* at 72.

12 90. Nevertheless, Mitchell and Jessen continued to "interrogate" Abu
13 Zubaydah for another ten days—in total, seventeen days of continuous torture. The
14 interrogation period ended on August 20, 2002, when Abu Zubaydah, who had by
15 then supposedly been induced into a state of "complete helplessness, compliance
16 and cooperation," began fabricating information and inventing fictional terrorist
17 operations. *Id.* at 11. By that point, Abu Zubaydah had been waterboarded at least
18 83 times, spent 266 hours in the coffin-like box, and sustained twenty-nine hours in
19 the "dog box." *Id.* at 71.

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1 The Torture Yielded Grave Harm, but No Actionable Intelligence

2 91. This extended abuse caused prolonged physical pain and injuries
3 which, as described below, persist today. In addition, the psychological impacts on
4 Abu Zubaydah were stunningly profound. He was extremely traumatized: with a
5 raised eyebrow from Mitchell, Abu Zubaydah would immediately be forced to sit on
6 or stand next to the table, or be shackled to bars, awaiting waterboarding. Two snaps
7 of the interrogator's fingers and he would be forced to lay back onto the board for
8 more torture. Abu Zubaydah would routinely be heard "uncontrollably mumbling,"
9 whimpering, and occasionally praying—begging—for help.

10 92. The ostensible reason for the torture had been to obtain intelligence,
11 allegedly withheld by Abu Zubaydah, regarding forthcoming terrorist events and
12 agents within the United States. After the stepped-up torture period, CIA personnel
13 at the detention site concluded that Abu Zubaydah had been truthful and never
14 possessed the information the torture program was intended to extract. CIA records
15 confirmed that Abu Zubaydah did not provide superior intelligence following his
16 exposure to the torture program. SSCI Report at 73-74.

17 93. Despite not obtaining any improved intelligence, let alone the type of
18 intelligence that the torture was intended to produce, Mitchell and Jessen self-
19 declared their experimental program a "success." In lieu of intelligence, they
20 reported that they could "confidently assess that [Abu Zubaydah] does not possess

1 undisclosed threat information.” *Id.* at 46. Mitchell and Jessen recommended that
2 the “aggressive phase” of Abu Zubaydah’s interrogation be used as a “template” for
3 future interrogations, and their independent contracts with the CIA were extended
4 and compensation increased to perform this new task. They were later flown back to
5 the United States to implement their plans.

6 94. With Mitchell and Jessen away seeking contracts to interrogate other
7 detainees, Abu Zubaydah’s interrogators took a more traditional, non-coercive
8 approach. One officer, who arrived after the “aggressive phase” had been completed,
9 was able to use a compliance-reward approach, mixed with photographs to jog Abu
10 Zubaydah’s memory, to elicit intelligence on three British Al-Qaeda suspects—more
11 than two months after Mitchell and Jessen had claimed success and departed.

12 **H. Abu Zubaydah Continues to Suffer Egregious Harm as a Result of Being**
13 **Tortured**

14 95. Abu Zubaydah was transferred between various black sites over the
15 next four years. These transfers involved further humiliations taken straight from
16 Mitchell and Jessen’s playbook, including hooding, forced diapering, and body
17 cavity searches.

18 96. Even though Abu Zubaydah was no longer a target for interrogation,
19 Mitchell and Jessen remained involved in his detention and transfers throughout this
20 period. They provided “maintenance” due to their familiarity with Abu Zubaydah,

1 despite warnings from staff that their history of torturing him made Mitchell and
2 Jessen inappropriate for the role.

3 97. In September 2006, Abu Zubaydah was transferred to the U.S. base in
4 Guantanamo Bay, where he remains confined as of the date of this filing. There are
5 currently no plans for his release, and opportunities for release are severely limited
6 given the notoriety imputed to Abu Zubaydah by Mitchell, Jessen, and others.

7 98. While Abu Zubaydah would have been detained regardless, his
8 ongoing, interminable detention without charge is intentional and due, in significant
9 part, to Mitchell and Jessen. In a July 2002 cable, the interrogation team supervised
10 by Mitchell and Jessen specifically requested this outcome, writing that “in light of
11 the planned psychological pressure techniques to be implemented, we need to get
12 reasonable assurances that Abu Zubaydah will remain in isolation and
13 incommunicado for the remainder of his life.” SSCI Report at 35. Accordingly,
14 consistent with Mitchell and Jessen’s clear intent and request, Abu Zubaydah’s
15 chances to be charged, tried, and/or released at any time during his life are limited
16 to nonexistent. To date, over twenty years after his capture, the U.S. Government
17 has not charged Abu Zubaydah with any crimes.

18 99. Though no longer confined in the cold, noisy, and brightly lit cell in
19 Thailand, Abu Zubaydah carries the emotional and physical scars of the torture he
20 endured. Many details of his physical and psychological injuries are presumed

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1 classified, but limited public information provides a window into the egregious
2 injuries that continue to plague Abu Zubaydah's daily life.

3 100. Abu Zubaydah has developed cognitive deficits and is aware that his
4 mind is slipping away. Although only 52, he suffers from partial amnesia and cannot
5 picture his mother's face or recall his father's name. For Abu Zubaydah, who has
6 not seen his family in over 20 years, this difficulty remembering his family is a
7 unique and ongoing torture. He has experienced an excruciating sensitivity to sound,
8 hearing what others do not, and is driven to near insanity by even the slightest noise.

9 101. Abu Zubaydah experienced seizures—more than 300 between 2008
10 and 2011—and blinding headaches. He also lost consciousness 324 times between
11 2007 and 2015 (for which there are records). For periods, he would lose control of
12 his bladder when he was under stress and, as a result of the renditions from one black
13 site to another, during which he was not permitted to use a bathroom for sustained
14 periods, together with the lack of medical care following the injuries sustained
15 during his capture, he suffers from chronic and severe constipation.

16 102. Because he was not afforded adequate preventative medical
17 procedures, Abu Zubaydah emerged from the black site in Thailand without a
18 functioning left eye. In a June 13, 2016 statement (through an interpreter) to the
19 Combatant Status Review Tribunal, Abu Zubaydah accused the CIA of not caring

1 about the injuries “that they inflicted to my eye, to my stomach, to my bladder, and
2 my left thigh and my reproductive organs.”

3 103. That Abu Zubaydah continues to suffer should come as no surprise. In
4 one study undertaken by Physicians for Human Rights (“PHR”), the organization
5 evaluated the long-term consequences of “detention and interrogation methods such
6 as use of excessively hot or cold cells, constant exposure to light or loud music,
7 inadequate food, and unsanitary conditions [...], beatings, sexual abuse, sleep
8 deprivation, and stress positions designed to put serious physical strain on their
9 bodies.” Physicians for Human Rights, *Broken Laws, Broken Lives* 30-31 (2008).
10 There, 100% of the former detainees evaluated by PHR suffered from persistent
11 musculoskeletal pain and chronic severe headaches.

12 104. Like many former detainees, Abu Zubaydah suffers from weakness and
13 numbness in limbs as a result of being subjected to stress positions and exposure to
14 cold temperatures for hours on end, hearing loss resulting from constant exposure to
15 loud music, vision problems from being forcibly kept in constant bright fluorescent
16 lighting, and memory loss as a result of the trauma he endured in captivity.

17 105. As PHR has documented, former detainees like Abu Zubaydah who
18 were subjected to cruel and inhumane treatment suffer from anxiety, depression,
19 insomnia, post-traumatic stress disorder, feelings of hopelessness and isolation,
20 panic attacks, and night terrors.

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1 **I. Defendants Profit from Their Torture Program**

2 106. Mitchell and Jessen were well compensated as a result of their scheme.
3 Following various salary raises, and in addition to the hundreds of thousands of
4 dollars they had already received, on June 13, 2003, Defendants signed new
5 contracts with the CIA for \$598,000 each on an annual basis. Additionally, they
6 received \$78,000 each to coach newly hired psychologists, and Mitchell received
7 \$90,500 and Jessen received \$99,900 to rewrite training materials. By the end of
8 2004, Mitchell had earned \$1,459,601.30 and Jessen had earned \$1,204,550.42.

9 107. On March 5, 2005, Mitchell and Jessen leveraged the “expertise” they
10 gained from torturing Abu Zubaydah to create MJA, a company that, according to a
11 registration statement filed in Washington, would “provide consulting and training
12 to the U.S. government.” Incorporated in Delaware and operating in Washington,
13 DC and Spokane, Washington, MJA profited for years from the purported
14 experience and research insight gained through Defendants’ uncontrolled
15 “observational study” of Abu Zubaydah, allowing Mitchell and Jessen to earn even
16 more than they were already earning in their individual capacities.

17 108. In the period from 2005 to 2009, the CIA paid MJA \$81 million. This
18 is in addition to the more than \$1 million that Mitchell and Jessen received from
19 their individual “applied research” contracts.

1 109. During this period and for long afterward, Mitchell and Jessen's
2 identities remained unconfirmed, and their involvement with the torture-based
3 interrogation program unknown. The United States initially refused to declassify
4 records pertaining to Abu Zubaydah's interrogation, and only upon the release of the
5 SSCI Report on December 9, 2014 did information about the so-called "enhanced
6 interrogation" program and the torture endured by Abu Zubaydah enter the public
7 domain. Before the release of the SSCI Report, any suits involving the program
8 would have implicated classified "intelligence" information, been deemed a risk to
9 national security, and been unable to progress, much less succeed. That such a claim
10 could have been pursued by a Guantanamo detainee—even one alleging a first-hand
11 account of the horrors he had personally endured—would have been even less likely,
12 if not completely outside the realm of possibility.

13 110. The SSCI Report did not disclose the identities of Abu Zubaydah's
14 torturers. Instead, it referenced Mitchell and Jessen as unnamed "contractors" or via
15 pseudonyms: Grayson Swigert and Hammond Dunbar. Thus, Mitchell and Jessen's
16 identities remained unknown both to Abu Zubaydah and the public at large. In part,
17 this was because his detention at various CIA sites, including Guantanamo, made it
18 largely impossible for him to discover their identities and roles. But it was also
19 because of a deliberate government policy that obfuscated both the interrogation
20 program itself and the identities of persons involved in it—especially Mitchell and

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1 Jessen, the civilian architects of that program. This policy stemmed from the
2 recognition that knowledge of the interrogation program could severely damage
3 United States interests abroad, and concerns that persons who participated in the
4 program could be exposed to reprisals.

5 111. This policy stayed in place for years. As a result, even when Abu
6 Zubaydah had access to counsel, filed a habeas challenge, and supported a criminal
7 proceeding in Poland, he was not initially able to bring a lawsuit against Mitchell
8 and Jessen because their identities were unconfirmed, and there was not a reasonable
9 expectation that their identities and their roles with the CIA would be permitted to
10 be publicly aired in court sufficient to make out a claim.

11 112. In 2014, Mitchell and Jessen were suspected of having a connection to
12 the CIA's interrogation program, and Mitchell gave a personal interview concerning
13 some of his involvement in December 2014. However, at that time and for years
14 after, the reasonable expectation was that none of the information available to the
15 public could be used by a Guantanamo detainee to support a suit in federal court
16 because the vociferous claims to secrecy asserted against Guantanamo detainee
17 litigants by the government made such a suit impossible.

18 113. To date, the U.S. Government remains highly protective of the still-
19 classified details of Mitchell and Jessen's torture-based interrogation program, and

1 attempts by Abu Zubaydah and others to seek justice and accountability have been
2 thwarted as a result. *See United States v. Zubaydah*, 142 S. Ct. 959 (2022).

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**
5 **(Torture and Other Cruel, Inhuman, and Degrading Treatment)**

6
7 114. Plaintiff Abu Zubaydah realleges and incorporates by reference the
8 allegations set forth in paragraphs 1 through 113 as if fully set forth herein.

9
10 115. The use of torture and other cruel, inhuman, and degrading treatment is
a violation of the law of nations and treaties of the United States.

11
12 116. Defendants Mitchell and Jessen tortured Abu Zubaydah and subjected
him to cruel, inhuman, and degrading treatment in that, working under the claimed
13 authority of the CIA, Mitchell and Jessen designed and implemented a program
14 specifically intended to inflict severe and prolonged physical and mental pain and
15 injury on Abu Zubaydah.

16
17 117. Defendants Mitchell and Jessen acted under color of law and/or in
concert with those acting under color of official authority in that they acted with
18 apparent (though not bona fide) authority.

19
20 118. Defendants Mitchell and Jessen intentionally inflicted severe and
prolonged physical and mental pain and suffering on Abu Zubaydah in order to

- 1 degrade his mental and psychological condition to a state of “learned helplessness”
- 2 in which he would be unable to resist demands for information.

3 119. By design, the techniques were severely degrading to human dignity,
4 and involved the deliberate use of terror, pain, disgrace, and unnecessary cruelty as
5 tools against Abu Zubaydah's mental and emotional well-being.

6 120. Defendants Mitchell and Jessen's acts and omissions caused Abu
7 Zubaydah to suffer damages, including severe and prolonged physical, mental, and
8 emotional pain and suffering.

9 121. Defendants Mitchell and Jessen's acts and omissions were deliberate,
10 willful, intentional, wanton, malicious, oppressive, and in conscious disregard for
11 Abu Zubaydah's rights under international and U.S. law and should be punished by
12 an award of punitive damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION (Non-Consensual Medical and Scientific Experimentation)

16 122. Plaintiff Abu Zubaydah realleges and incorporates by reference the
17 allegations set forth in paragraphs 1 through 121 as if fully set forth herein.

18 123. Non-consensual medical and scientific experimentation performed on
19 humans is a violation of the law of nations and treaties of the United States.

20 124. Defendants Mitchell and Jessen experimented on Abu Zubaydah under
21 color of law and without his consent. Specifically, Abu Zubaydah was a non-

1 consenting research subject for Mitchell and Jessen's experimental theory that
2 prisoners could be reduced to a state of "learned helplessness" through abusive
3 treatment and thereby rendered passive, compliant, and unable to resist
4 interrogators' demands for information. Mitchell and Jessen selectively consulted
5 with various psychologists and academics to develop their methodology,
6 transforming the monitored defensive SERE program training into an offensive
7 uncontrolled behavioral study on an unwilling research subject.

8 125. As part of this experiment, Defendants Mitchell and Jessen designed,
9 developed, and implemented an experimental protocol to test whether it was possible
10 to induce a state of "learned helplessness" in the face of perceived "resistance
11 techniques," and whether detainees became fully compliant with interrogators'
12 demands once they had been reduced to a state of learned helplessness.

13 126. Defendants Mitchell and Jessen experimented on Abu Zubaydah
14 without his consent by attempting to induce in him a state of "learned helplessness"
15 through torture, and by monitoring, recalibrating, and refining their mistreatment
16 based on their assessment of Abu Zubaydah's physical and psychological reactions
17 to torture and cruel treatment. Mitchell and Jessen collected data on the "efficacy"
18 of their interrogation tactics in achieving total control over their test subject by
19 torturing and degrading him to a state of learned helplessness. They made conscious

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decisions in directing and overseeing the execution of their experiment, performing the dual roles of psychologist and interrogator.

3 127. After having tested the “learned helplessness” theory by experimenting
4 on Abu Zubaydah, Defendants Mitchell and Jessen used the data and revelations
5 gained from experimenting on Abu Zubaydah to create educational materials for the
6 CIA and instruct fellow interrogators on how to implement versions of the protocol
7 developed on Abu Zubaydah when interrogating other prisoners.

8 128. Defendants Mitchell and Jessen's acts and omissions caused Abu
9 Zubaydah to suffer grave and foreseeable harm, including severe and prolonged
10 physical, mental, and emotional pain and suffering.

11 129. Defendants Mitchell and Jessen's acts and omissions were deliberate,
12 willful, intentional, wanton, malicious, and oppressive, and in conscious disregard
13 for Abu Zubaydah's rights under international and U.S. law prohibiting non-
14 consensual human experimentation and should be punished by an award of punitive
15 damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION (War Crimes)

19 130. Plaintiff Abu Zubaydah realleges and incorporates by reference the
20 allegations set forth in paragraphs 1 through 129 as if fully set forth herein.

1 131. Torture, cruel treatment, and outrages upon personal dignity, as well as
2 non-consensual medical and scientific experimentation, are prohibited under the law
3 of nations and treaties of the United States applicable in non-international armed
4 conflicts.

5 132. Defendants Mitchell and Jessen subjected Abu Zubaydah to “outrages
6 upon personal dignity,” and “torture, corporal punishment . . . and medical or
7 scientific experiments” without his consent while he was detained by the United
8 States. To the extent that any parties argue that this conduct took place in the course
9 of a non-international armed conflict, it amounted to a violation of customary
10 international law prohibiting war crimes.

11 133. Defendants Mitchell and Jessen experimented on Abu Zubaydah
12 without his consent by attempting to induce in him a state of “learned helplessness”
13 through torture, and by monitoring, recalibrating, and refining their mistreatment
14 based on their assessment of Abu Zubaydah’s physical and psychological reactions
15 to torture and cruel treatment.

16 134. After having tested the “learned helplessness” theory by experimenting
17 on Abu Zubaydah, Defendants Mitchell and Jessen went on to recommend and then
18 implement versions of the protocol developed on Abu Zubaydah when interrogating
19 other prisoners, using information learned from experimenting on Abu Zubaydah.

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1 135. Defendants Mitchell and Jessen's acts and omissions described herein
2 caused Abu Zubaydah to suffer damages, including severe and prolonged physical,
3 mental, and emotional pain and suffering.

4 136. To the extent that any parties argue that their conduct took place in the
5 course of a non-international armed conflict, Defendants Mitchell and Jessen's acts
6 and omissions were deliberate, willful, intentional, wanton, malicious, oppressive,
7 and in conscious disregard for Abu Zubaydah's rights under international and U.S.
8 law prohibiting war crimes and should be punished by an award of punitive damages
9 in an amount to be determined at trial.

FOURTH CAUSE OF ACTION (Arbitrary Detention)

13 137. Plaintiff Abu Zubaydah realleges and incorporates by reference the
14 allegations set forth in paragraphs 1 through 136 as if fully set forth herein.

15 138. Arbitrary detention is prohibited under the law of nations and treaties
16 of the United States.

17 139. Defendants Mitchell and Jessen subjected Abu Zubaydah to arbitrary
18 detention insofar as they were a direct and proximate cause of, contributed to, and
19 aided and abetted his detention in an official detention facility, without legal basis
20 and without notice of charges, and he has been neither charged nor brought to trial
21 despite the passage of over two decades since his capture.

1 140. At Defendants Mitchell and Jessen's urging, with their oversight, and
2 pursuant to their baseless and counter-factual predictions that he would divulge
3 actionable intelligence, Plaintiff Abu Zubaydah was detained at unregistered and
4 unregulated CIA "black sites," without legal authority, for a prolonged and
5 unreasonable periods, and in conditions that were incompatible with the principles
6 of justice or with the dignity of the human person.

7 141. Abu Zubaydah was physically tied to a board by and under the direction
8 of Defendants Mitchell and Jessen for at least 83 applications of water torture for
9 prolonged and unreasonable periods.

10 142. As a direct and proximate result of the fact that Defendants Mitchell
11 and Jessen tortured Abu Zubaydah, and at their explicit request and recommendation
12 that he "remain in isolation and incommunicado for the remainder of his life," Abu
13 Zubaydah has been held with limited opportunity to be charged or released, and has
14 not been charged or released, for over two decades.

15 143. Defendants Mitchell and Jessen's acts and omissions described herein
16 caused Abu Zubaydah to suffer damages, including severe and prolonged physical,
17 mental, and emotional pain and suffering.

18 144. Defendants Mitchell and Jessen's acts and omissions were deliberate,
19 willful, intentional, wanton, malicious, oppressive, and in conscious disregard for
20 Abu Zubaydah's rights under international and U.S. law prohibiting arbitrary

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1 | detention and should be punished by an award of punitive damages in an amount to
2 | be determined at trial.

PRAYER FOR RELIEF

4 WHEREFORE, Abu Zubaydah respectfully requests that this Court grant the
5 following relief:

6 A. Compensatory damages in an amount to be proven at trial in excess of
7 \$75,000;

8 B. Punitive and exemplary damages in an amount to be proven at trial;

9 C. The reasonable attorneys' fees, costs, and disbursements incurred by

10 | Abu Zubaydah in this action; and

11 D. Such other relief as the Court may deem just and proper.

JURY TRIAL DEMAND

13 Abu Zubaydah demands a jury trial on all issues so triable.

14 | Dated: September 18, 2023

Respectfully submitted,

FINER WINN

By: /s/ Jeffry K. Finer

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